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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CONRAD DEMETRIUS TRE WILLIAMS,)

10 Plaintiff,)

11 v.)

12 NIKKI BAINNER, *et al.*,)

13 Defendants.)
14 _____)

CASE NO. C08-1000-RAJ-JPD

REPORT AND RECOMMENDATION

15 INTRODUCTION AND SUMMARY CONCLUSION

16 This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff Conrad Demetrius Tre
17 Williams initiated the instant civil rights action in June 2008 while he was incarcerated in the
18 Snohomish County Jail. He alleges in his amended complaint that institutional policies and his right
19 to be free from cruel and unusual punishment were violated when he was denied the special diet
20 necessary to accommodate his allergies to soy products and to chili spice.¹ Plaintiff identifies Nikki
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23 ¹ Plaintiff has been booked into the Snohomish County Jail 18 times since 1996. (*See* Dkt.
24 No. 30 at 3.) It appears that the instant complaint pertains to plaintiff's most recent period of
25 confinement which began on May 9, 2008, when plaintiff was booked into the jail, and ended on
26 August 5, 2008, when plaintiff was apparently transferred into the custody of the Washington
Department of Corrections.

REPORT AND RECOMMENDATION

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1 Bannner, Sandy Dimmenl, and, A.R.A. Mark as defendants in this action. A.R.A. Mark was
2 dismissed from this action prior to service.

3 Defendants Bannner and Dimmenl² now move for summary judgment or, in the alternative,
4 for dismissal based upon plaintiff's failure to exhaust his administrative remedies. Plaintiff has filed
5 an objection to defendants' motion. The Court, having reviewed defendants' pending motion,
6 plaintiff's objection thereto, and the balance of the record, concludes that defendants' motion should
7 be granted to the extent defendants seek dismissal of this action based upon plaintiff's failure to
8 exhaust his administrative remedies, and that plaintiff's amended complaint and this action should be
9 dismissed without prejudice.

11 DISCUSSION

12 Defendants argue in their pending motion for summary judgment that plaintiff is barred from
13 filing this lawsuit because he failed to properly exhaust his administrative remedies with respect to
14 the claim asserted in his amended complaint. (Dkt. No. 28.) The record supports this argument.

15 Section 1997e(a) of Title 42 of the United States Code provides that "[n]o action shall be
16 brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by
17 a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies
18 as are available are exhausted." 42 U.S.C. § 1997e(a). Section 1997e(a) requires *complete*
19 exhaustion through any available process. *See Porter v. Nussle*, 534 U.S. 516, 524 (2002) ("All
20 'available' remedies must now be exhausted."); *Booth v. Churner*, 532 U.S. 731, 735 (2001). Section
21 1997e(a) also requires *proper* exhaustion. *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). "Proper"

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24 ² Defendants, in their summary judgment motion, indicate that they believe plaintiff intends
25 to name Snohomish County employees Nikki Behner and Sandra Needham as the defendants in this
26 action. (Dkt. No. 28 at 3 n. 1.)

1 exhaustion means full compliance by a prisoner with all procedural requirements of an institution's
2 grievance process. *See id.* at 93-95.

3 If administrative remedies have not been exhausted at the time an action is brought, it must be
4 dismissed without prejudice. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002)(per
5 curiam). "In deciding a motion to dismiss for a failure to exhaust nonjudicial remedies, the court
6 may look beyond the pleadings and decide disputed issues of fact. If the district court concludes that
7 the prisoner has not exhausted nonjudicial remedies, the proper remedy is dismissal of the claim
8 without prejudice." *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003)(citations and footnote
9 omitted).

10 The Snohomish County Jail has a three tier grievance procedure through which inmates may
11 seek review of various aspects of their imprisonment. (*See* Dkt. No. 29.) The procedure involves
12 first filing a grievance with the shift commander and/or supervisor. (*See id.*) If the inmate is not
13 satisfied with the response received from the shift commander/supervisor, the inmate may file a
14 second grievance for review by a manager. (*See id.*) If an inmate is not satisfied with the response
15 received from the manager, the inmate may file a final grievance for review by the director of the
16 facility. (*Id.*)

17 Defendants acknowledge in their motion papers that plaintiff filed a number of medical kites
18 and grievances related to the issue of his allergies and the need for a special diet. Defendants assert,
19 however, that plaintiff failed to properly appeal his grievances concerning his diet or to exhaust the
20 administrative grievance appeals available to him. The parties have submitted documentation which
21 demonstrates that plaintiff filed at least ten grievances related to the issue of his food allergies and his
22 need for a special diet. While the record makes clear that plaintiff was not satisfied with the
23 responses he received to many of his grievances, there is no indication in the record that plaintiff

1 made any attempt to appeal those responses to the next level of the grievance process. Certainly,
2 there is no indication that plaintiff ever sought review of his complaints concerning his allergies and
3 his need for a special diet to the director of the Snohomish County Jail, the final state of the
4 established grievance process. Accordingly, this Court concludes that plaintiff failed to fully exhaust
5 the grievance process with respect to his claim that he was denied the special diet necessary to
6 accommodate his allergies, and that his amended complaint must therefore be dismissed.

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8 CONCLUSION

9 As it appears that plaintiff has not properly exhausted his administrative remedies with
10 respect to the claim asserted in his amended civil rights complaint, this Court recommends that
11 defendants' motion for summary judgment be granted to the extent that it seeks dismissal of this
12 action based upon plaintiff's failure to properly exhaust his administrative remedies. This Court
13 further recommends that plaintiff's amended complaint and this action be dismissed without
14 prejudice. A proposed order accompanies this Report and Recommendation.

15 DATED this 23rd day of June, 2009.

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17 JAMES P. DONOHUE
18 United States Magistrate Judge
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